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Supreme Court of the United States

OCTOBER TERM, 1970

No. 71-13

W. A. BOYLE, C. W. DAVIS, and JOSEPHINE ROCHE, TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950,
Petitioners,

v.

THOMAS LAVELLA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioners, the Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia entered in this proceeding on April 16, 1971.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix to this Petition at pages 1a to 6a.

JURISDICTION

The judgment and opinion of the Court of Appeals for the District of Columbia were entered on April 16, 1971 (App. 1a-6a). A Petition for Rehearing *En Banc* was filed by these petitioners on April 29, 1971 and denied by action of the Court on May 12, 1971 (App. 7a).

The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Are the trustees of a retirement fund created pursuant to Section 302(c)(5), Labor Management Relations Act, 1947, required to hold that pension rights *vest* in an applicant upon his involuntary separation from employment due to permanent disability from causes endemic to the industry and who met all eligibility requirements then in effect except age, on the ground that his pension rights vested upon such involuntary separation, even though upon reaching the eligibility age fifteen years later he failed to meet the requirements as subsequently amended, when under admitted trust authority neither Section 302(c)(5), nor the Trust Indenture, provides for or requires such vesting?

STATUTES AND RESOLUTIONS INVOLVED

The pertinent portions of the statutes and resolutions involved, if not quoted in the text, are set forth in the Appendix to this Petition at pages 7a to 20a.

STATEMENT OF THE CASE

A. Introductory

Section 302(c)(5) of the Labor Management Relations Act, 1947 (61 Stat. 157, 29 U.S.C. § 186(c)(5)),[1] authorizes employers to make payments to trust funds established by employers and unions for the exclusive benefit of the employers' employees, their families and dependants, provided the criteria established in Section 302(c)(5) is met. This case involves the administration of one such trust fund, the United Mine Workers of America Welfare and Retirement Fund of 1950 (hereinafter the "Fund") which was established by the Trust Indenture contained in the National Bituminous Coal Wage Agreement of 1950 (hereinafter the "Wage Agreement").[2] The petitioners are the three Trustees of the Fund.

The Wage Agreement, which was entered into on March 5, 1950 by various bituminous coal operators and the United Mine Workers of America, International Union, was the outcome of collective bargaining to fix the terms of industrial relations, wages and other conditions of employment, between the coal operators and their employees as represented by the Union. The Trust Indenture provided for the establishment of the Fund for the benefit of employees of the operators and their families, the Fund's moneys to be derived from the operators' payment to the Fund of a fixed amount per ton of coal that the operator produced during the period of the Wage Agreement.

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[1] This section is set out in Appendix hereto, pages 7a-8a.

[2] The pertinent portions of the Trust Indenture are set out in Appendix hereto, pages 8a-14a.

Pursuant to Section 302(c)(5), the Trust Indenture provided the Fund would be administered by three Trustees, one appointed by the Union, another by the employers and the third, the neutral Trustee, selected by the other two. The Trustees were vested with full authority with respect to "questions of coverage and eligibility" for Fund benefits and they were empowered to resolve in writing the "detailed basis upon which payments from the Fund will be made." The Trustees established pension eligibility requirements under the authority of the Trust Indenture and, at various times, they have amended those eligibility requirements as they deemed necessary in light of their experience.

The initial detailed basis for payment was contained in Resolution No. 10 which the then Trustees adopted on April 5, 1950.[3] This Resolution provided, *inter alia,* that an applicant must have worked in the coal industry for twenty years and have reached the age of 60 years in order to qualify for a retirement pension. It also provided it "shall be subject to amendment, revocation and revision at the discretion of the Trustees." (App. 15a) Resolution No. 10 was revoked effective January 28, 1953 by Resolution No. 29, which appears as Appendix E hereto and, effective the same day, the Trustees adopted Resolution No. 30.[4] This resolution, *inter alia,* amended the length-of-service requirement to provide that the twenty years' service in the coal industry must have been earned in the twenty-five years immediately preceding the date of applica-

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[3] Pertinent portions of Resolution No. 10 are set forth in Appendix hereto, pages 14a-15a.

[4] Pertinent portions of Resolution No. 30 are set forth in Appendix hereto, pages 16a-17a.

tion. This requirement was immediately thereafter changed to allow the twenty years' service to be earned in the thirty years immediately preceding the date of application.[5]

The "twenty out of thirty" requirement has been in effect since 1953 for retirements prior to 1965, but the retirement age of 60 years was reduced to 55 years by Resolution No. 63 which was adopted on January 4, 1965. Resolution No. 63 was in effect at the time respondent filed his application for pension benefits in 1967.[6]

Each of the pertinent Resolutions provided that eligibility would be determined on the basis of the Resolution in effect at the time of application. The Trustees' authority to revise and amend their eligibility requirements has been repeatedly recognized by the court below. *Gaydosh* v. *Lewis,* 410 F. 2d 262 (C.A. D.C., 1969); *Roark* v. *Boyle,* 439 F. 2d 497 (C.A. D.C., 1970); and *Kosty* v. *Lewis,* 319 F. 2d 744 (C.A. D.C., 1963). In the last cited case at pages 748-749 the court said:

> "We do not deny the authority of the Trustees to revise pension eligibility requirements in the light of their experience. Flexibility of this kind seems especially necessary for the operation of this Fund, tied as it is to the fluctuating fortunes of the coal industry."

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[5] Pertinent portions of Resolution No. 31 are set forth in Appendix hereto, page 17a.

[6] Pertinent portions of Resolution No. 63 are set forth in Appendix hereto, pages 18a-20a.

B. Facts of This Case

Respondent was born February 10, 1912, and he commenced working as a miner in the coal mining industry in either 1928 or 1929. He continued such employment and, by 1952, he was suffering from silicosis which resulted in his not working for various periods during the years 1952-1955 (App. 21a, 25a). During his illnesses his hospital and medical expenses, including rehabilitation expenses, were paid by the Fund pursuant to its hospital and medical benefits program.

In 1952, the respondent was 40 years old and he was not eligible for a retirement pension which at that time was granted only to persons 60 years of age or older. He did meet all the other eligibility requirements for retirement pension benefits which had been established by Resolution No. 10.

Respondent worked in the industry in 1953 and 1955 (App. 21a). Respondent's evidence showed that in 1953 he worked until August; in 1955 he worked from June until December (App. 23a, 25a, 21a); and in 1956 he worked for one quarter of the year (App. 21a). His work in the bituminous coal industry permanently ceased as of 1955 if Trustees' facts are accepted or 1956 if respondent's facts are accepted, a difference which is unimportant here.

In 1967, when respondent reached the age of 55 years, the age requirement for pension eligibility established in 1965 by Resolution No. 63, he submitted an application for a retirement pension to the Trustees, the application being received by the Fund on March 13, 1967 (App. 22a).[7] The Trustees denied respondent's appli-

[7] If the Resolution in effect in 1952 measures respondent's rights, then he would not be entitled to a pension until 1972 when he becomes 60 years of age, the age requirement then in effect.

cation on May 10, 1967 (App. 27a), pursuant to Resolution No. 63.

The reason for denial was that "[a]pplicant has not established proof of twenty (20) years' classified service in the coal industry within the thirty (30) year period immediately preceding the date his application was received at the Fund", namely, March 13, 1937 to March 13, 1967 (App. 27a). This requirement had been in effect since 1953, two years prior to the time respondent ceased working in the industry.

C. The Decisions Below

The District Court granted the Trustees' motion for summary judgment on the grounds that denial of respondent's application was required by Resolution No. 63, and the denial was based upon substantial evidence, and the denial was not arbitrary, capricious or in bad faith. Respondent's appeal urged only that he met the requirements of Resolution No. 63, and was not based on the contention that he was permanently disabled prior to 1953.

The Court of Appeals reversed the District Court and, in so doing, it rested its decision on a point that had not been raised, briefed or argued by either the respondent or the Trustees.[8] The court below, without citation of authority, overruled the Trustees' decision that the controlling eligibility requirements were those in effect at the time respondent reached retirement age, and held that respondent "had sufficiently

[8] Near the close of the Trustees' argument one member of the panel inquired as to nature of the length of service requirement in effect in 1952 and he was advised that any twenty years was sufficient at that time, after which a very brief discussion of the question occurred.

vested rights in 1952 which could not be cut off by the change in eligibility requirements in 1953". The Court of Appeals erroneously sought to justify its selection of 1952 saying that was when Lavella became permanently disabled and "was forced to quit work because of his advanced silicosis" (App. 3a). As discussed above, the record shows that respondent did not cease work in the industry until some time in 1955 or 1956.

In an attempt to do equity to the respondent, the Court of Appeals held that all applicants permanently disabled "by [an] occupational disease endemic to the mining industry" had vested pension rights if the applicant qualifies under the eligibility requrements in force when he became totally disabled, with the exception of age. The Court of Appeals seems to recognize the legal weakness of its conclusion since it said "our use of the term 'vested' in these circumstances is merely a shorthand way of describing this situation" (App. 5a).

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE LAW AND APPLICABLE DECISIONS OF THIS COURT AND OTHER COURTS OF APPEALS AS TO WHEN PENSION RIGHTS VEST OR MATURE.

The decision below rested on the court's finding that respondent's eligibility for a pension was to be determined in accordance with the requirements in effect in 1952 since his rights, with the exception of age, became "vested" in that year. This holding directly conflicts with the Trustees' determination that entitlement to retirement pension benefits must be determined on the basis the applicant meets *all* the requirements

in effect at the time application is made. The Trustees have followed and applied this policy since they began administering the Fund. They submit that neither Section 302(c)(5) of the Labor Management Relations Act, 1947, the Trust Indenture contained in the National Bituminous Coal Wage Agreement of 1950, the Resolutions adopted pursuant thereto, nor judicial decisions authorize a finding that respondent's rights became vested in 1952. Accordingly, it is submitted that the Trustees did not act either erroneously or arbitrarily and capriciously and their adoption and application of Resolution No. 63 was a proper exercise of their discretion.

A. The Labor Management Relations Act Does Not Require Vesting.

Section 302 cannot be construed to require the vesting of retirement pension benefits before the applicant reaches retirement age. The failure of Section 302 (c) (5) to require vesting is attested by the efforts in Congress to propose legislation, on a prospective basis, to require some vesting of employee rights in Section 302(c)(5) trusts. Judge Leventhal discussed the question of vesting in the context of legislative history in *Roark* v. *Boyle,* 439 F. 2d 497 (C.A. D.C., 1970), a case which involved another requirement of the Fund. In concluding his discussion Judge Leventhal noted (p. 505):

> "None of the various proposals for a vesting requirement were enacted into law. The 1968 Hearings make clear that even those who supported a vesting requirement understood that existing law permitted the establishment and continuance of pension plans that did not provide for vesting, ..."

B. Neither the Settlors of the Fund Nor the Trustees Provided for or Authorized Vesting.

The settlors of the Fund specifically rejected the vesting principle in the Trust Indenture which, in part, states (App. 11a):

> "Title to all the monies paid into and/or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund . . . no benefits or monies payable from this Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void."

The Trustees always determined pension application on the basis of the regulations in effect when the application was received. Thus, Resolution No. 63, provided (App. 18a):

> "BE IT FURTHER RESOLVED, That effective February 1, 1965, the following regulations shall govern the payment of pensions * * * to employees of employers signatory to the National Bituminous Coal Wage Agreement of 1950, as amended, other than those exempted from said agreement, and shall be subject to amendment, revocation and revision at the discretion of the Trustees."

The settlors did not act to change the authority of the Trustees, or to in any manner object to the Fund administration, or to provide for the vesting of pension benefits before complete eligibility. The failure of the settlors to act when amending the National Bituminous Coal Wage Agreement of 1950 in 1951, 1952, 1955, 1956, 1958, 1964 and 1966, or in the creation of

the National Bituminous Coal Wage Agreement of 1968, is conclusive of their satisfaction with Trustees' actions and the Trust administration.

C. The Impact of This Opinion Could Put the Fund in Financial Jeopardy.

The financial impact on the Fund cannot be measured precisely since the number of miners who have become permanently disabled for reasons endemic to the industry are not known to the Trustees. By viewing the experience under the Federal Coal Mine Health and Safety Act of 1969 [9] in the largest field of injury or disease endemic to the coal industry, black lung, the real, potential number of Fund pension claimants, could inundate the Fund.

If the estimated total of 260,000 black lung beneficiaries under the federal program by June of 1972 [9] is correct, and if only ten percent of those qualified under the *Lavella* doctrine for Fund pension benefits, the current number of Fund pensioners would increase by one-third to over 100,000.

Other classes of permanent disability endemic to the industry are also involved. Within seven days after the *Lavella* doctrine was pronounced the Trustees were sued by a miner who alleged that his application for the retirement pension was erroneously denied.[10] He alleged that in 1948 he was permanently disabled at age 47 in a mining accident and that at that time, he met all of the then existing requirements for eligibility except age. On May 11, 1971, another suit, styled as a

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[9] Daily Labor Report (BNA) No. 118, June 18, 1971, p. A-12.

[10] *Keene* v. *Boyle, et al.* (D.C. D.C.), C.A. No. 826-71, filed April 23, 1971.

class action,[11] was brought against the Trustees in reliance on the *Lavella* doctrine by another applicant for pension who had been denied and who had not worked in the industry since 1951, when he was totally disabled in a mine accident.

The court here has obviously attempted to do equity in the case of respondent without consideration of the problems, both financial and equitable, which face the Trustees. The Trustees are not without recognition of the ravages of the industry and have equal concern for individual equities of coal miners. However, operating under fiduciary duties and obligations the Trustees cannot afford the luxury of granting benefits in the case of individual equities. If this were so, they could and would be charged with breaching their fiduciary duty to treat *all* beneficiaries alike.

As another panel of the same court said in *Roark* v. *Lewis,* 401 F. 2d 425, 429, (C.A. D.C., 1968), "[t]he court is fully cognizant of the internal pressures exerted on the trustees: the size of the pie is fixed and variations can be achieved only by changing the size or the number of the slices." The Trustees, also aware of the "number of slices" available, did not provide for *disability* pensions for employees in the coal industry, but provided only *pension* benefits upon retirement after meeting certain eligibility qualifications. In effect, the court below exercised the discretion and authority of Trustees and awarded a disability pension. With limited funds, the Trustees of necessity must limit benefits within the authority and discretion granted to them by the settlors; and exercising this discretion the Trustees did not provide for disability

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[11] *Kaushep* v. *Boyle, et al.* (D.C. D.C.), C.A. No. 939-71, filed May 11, 1971.

pensions. This authority cannot be exercised by the courts, absent a showing of arbitrary and capricious action by the Trustees, and the court here found Trustees' action was not "per se arbitrary and capricious" (App. 4a).

In the most recent case, *Lee* v. *Nesbitt, et al., Trustees of the National Maritime Trust* [12] (C.A. 9th), No. 25973, decided June 11, 1971, not yet reported, the court dealing with a similar Section 302(c)(5) trust, held that where an employee met all qualifications for pension benefits except age, he could not be denied pension benefits because of a subsequent involuntary separation from covered employment required for qualification. The involuntary separation came about "because he [was] unable to obtain employment due to the temporary unavailability of jobs". If the *Lee* case is followed, the financial impact on the Fund will be even greater. There, any involuntary separation gave an applicant pension benefits if at the time of separation he met all qualifications except age. Here, the involuntary separation must be based upon permanent disability due to injury or disease endemic to the industry. In either case, the Fund might not be able to absorb the financial impact.

D. The Decision Below Is in Conflict With the Rationale of the Decisions of This Court, and There Is a Conflict in the Circuits as to When Pension Rights Vest.

In *United States* v. *Embassy Restaurant,* 359 U.S. 29 (1959), this Court held that an employer's royalty payments due and owing to a welfare fund were not wages "due to workmen" as defined in the Bankruptcy

[12] For the convenience of the Court the opinion is reproduced, Appendix pages 28a-32a.

Act. This Court found the *Embassy Restaurant* case controlling in the more recent case of *Board of Electrical Industry* v. *United States,* 391 U.S. 224 (1968), which denied a wage priority in bankruptcy to payments due a welfare fund. The Court said (p. 227):

> "The case before us concerns employer contributions to the welfare fund which are similarly not due the employees and never were; they were payable only to the trustees, who had the exclusive right to hold and manage the fund. Though the contributions were credited to individual employee accounts, *nothing was payable to employees except upon the occurrence of certain events.*" (emphasis supplied)

The rationale of these cases makes it clear that respondent did not have a vested interest in the Fund in 1952 because he had not fulfilled the eligibility requirements. In short, his rights had not fully matured and the Trustees could *validly* adopt amendments to the eligibility requirements even though they resulted in denial of respondent's pension application.

The vesting question has been considered by various courts of appeals. *Schneider* v. *McKesson & Robbins, Incorporated,* 254 F. 2d 827 (C.A. 2, 1958) involved a pension plan providing for retirement at age 65. The plan further provided that upon termination of employment relationship prior to qualification at age 65 " 'for any reason whatsoever * * * [the employees'] participation shall thereupon terminate' " (p. 828). The court sustained denial of benefits to three discharged employees holding (p. 829):

> "Under the express terms of the plan the fund exists for the sole benefit of participants and retired participants. As the appellants had not at-

> tained age 65 at the time they were discharged, or had not reached age 60 so as to be eligible for retirement by special vote of the board of directors, they cannot claim an interest in the fund as if they were 'retired participants.' *Nor will they, upon attaining age 65, be entitled to a pension. Under the plan pensions are payable only to participants. The appellants ceased to be participants when they were discharged.*" (emphasis supplied)

The same result was reached by the Third Circuit in *Sparta* v. *Lawrence Warehouse Company,* 368 F. 2d 227 (C.A. 3, 1966); the Sixth Circuit in *Finnell* v. *Cramet, Inc.,* 289 F. 2d 409 (C.A. 6, 1961) and *Smith* v. *Union Carbide Corporation;* 350 F.2d 258 (C.A. 6, 1965); and by the Seventh Circuit in *Local Lodge 2040, Internat'l Ass'n of Mach.* v. *Servel, Inc.,* 268 F.2d 692 (C.A. 7, 1959), where the court was concerned with employees who were laid off involuntarily. The Seventh Circuit held (p. 699):

> "[T]hat no employee of the class represented by the individual plaintiffs was eligible for pension benefits under Servel's pension plan because each such person was discharged prior to his sixty-fifth birthday; * * *."

Similarly, *Finnell* v. *Cramet, Inc., supra,* involved a pension plan providing "No Employee prior to his retirement [at age 65] under conditions of eligibility for pension benefits under this Plan shall have any right or interest whatsoever in" the plan. Though the employees were discharged rather than leaving voluntarily, the court denied them plan benefits, stating (p. 413):

> "We think that under the foregoing provisions of the Pension Plan and under the applicable Il-

linois Law, *the appellants, having not yet qualified for a pension of any kind, had no vested rights in the pension fund.* * * *

"Appellants' so-called *rights* in the pension fund were actually not rights *at all, but were in the nature of expectancies, and as such were subject to the terms of the instrument under which they arose.*" (emphasis supplied)

As noted above, the Ninth Circuit's *Lee* case, supra, goes further than *Lavella* and holds that pension benefits vest in any involuntary separation, not only one resulting from permanent disability due to injury or disease endemic to the industry. Therefore, a direct conflict arises between the *Lee* case and the 2nd, 6th and 7th Circuit cases cited herein. This is in addition to the conflict here.

There is a conflict between the circuits as to when, and if, pension rights vest prior to an employee meeting all qualifications, including age, which must be resolved to insure the proper and orderly administration of the ever increasing number of pension trusts. The resolution of this question is of critical concern to both the beneficiaries and to the Trustees who are charged with the Trust administration and the distribution of the benefits.

E. The Question of Federal Law Raised by the Opinion Below Is Important and Continuing in the Administration of This and Other 302(c)(5) Trusts.

The *Lavella* vesting doctrine emphasizes that respondent's ceasing work was involuntary and the result of a disease "endemic" to the coal mining industry. This holding will create discrimination. For the first time there will be a class of beneficiaries with vested rights who, while not having to work, are entitled

to a retirement pension when they reach retirement age. Is the critical factor in the decision below involuntariness or a disabling "endemic" disease. If it is the former, then an employee discharged or laid off for cause or because of economic conditions would have vested rights if at the time he was laid off he qualified in all other respects. This would appear to be the rule in the Ninth Circuit's *Lee* case, supra. If it is the latter, the question arises of what illness is, or is not, "endemic" to the industry? Arthritis, lower back strain, heart attacks, can all be said to be "endemic", in that they can be caused by work in constant dampness, constant stooping and lifting, and constant extreme physical exertion. Considering the nature of the employment, cannot most illnesses of miners be said to be "endemic to the industry"? What clear cut standard has been left for Trustees and the lower courts to apply? Moreover, what rule should be applied to miners who involuntarily ceased working because of illness or injury resulting from non-mining connected illnesses or injuries?

In each of the foregoing situations a class of potential future beneficiaries with vested rights would be created. The Trustees could not know their number until years later and it would be impossible for the Trustees to engage in prudent financial planning.

Perhaps the lower court foresaw some of these difficulties and tried to limit its holding to the "individual facts of appellant's case". No such principle can be so circumscribed! This Court should establish a body of federal law concerning trust funds created in conformity with the Labor Management Relations Act, 1947. *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459 (1960). There the Trustees sued an employer for

failure to pay royalties. In its decision this Court described its function under Section 301 as follows (p. 470):

> "Section 301 authorizes federal courts to fashion a body of federal law for the enforcement of collective bargaining agreements. Textile Workers Union v. Lincoln Mills, 353 US 448, 1 L ed 2d 972, 77 S Ct 912."

The rationale of the *Benedict* case should be followed here, and this Court should decide this important question of federal law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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